

In re) Fair Hearing No. 10,921
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare terminating her ANFC benefits. The issue is whether the petitioner's husband is no longer "incapacitated" within the meaning of the pertinent regulations.

The petitioner's husband suffered a hernia in September, 1991. The petitioner applied for and was granted ANFC on the basis of his "incapacity" for work. However, in a report dated December 5, 1991, the petitioner's husband's doctor reported that the petitioner's husband would be able to return to work (at least thirty-five hours a week) in two weeks. On the basis of this report, the Department notified the petitioner that it was terminating her ANFC as of December 31, 1991.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § 2332 et. seq. includes the following provisions:

Physical or Mental Incapacity

A child is deprived of "parental support" when a parent is unable, due to his or her physical or mental condition, to maintain his or her earning capacity for a period of not less than 30 days from the date of application. If an applicant for ANFC Incapacity works 35 hours or more per week he or she is not eligible on the basis of incapacity.

. . .

Method of Determination

Physical or mental incapacity, as defined, requires professional medical determination based on a physician's report or other adequate written medical information which includes a diagnosis of physical or mental disability which may reasonably be expected to continue for 30 days or longer. The District Office shall inform the applicant of the method and procedures for establishing incapacity and refer the applicant to the Incapacity Examiner for follow up action and decision.

. . .

Closure of Incapacity

A closure of ANFC incapacity must be based on the fact that the incapacity no longer prevents the recipient from fulfilling his or her role either as a wage earner or as a homemaker for the assistance group.

When incapacity no longer exists, the IV-A agency shall inform the assistance group of this fact and provide a 10-day period within which the assistance group may apply for ANFC on the basis of unemployment of the principal earner (in the case of two-parent families) or on the basis of absence (in the case of single-parent families). (See Change in Deprivation factors, WAM 2334.)

As noted above, the petitioner does not dispute the

fact that as of December 19, 1991, her husband had regained the ability to work thirty-five hours a week at his past employment (laborer). Inasmuch as the Department's decision is in accord with the pertinent regulations, it must be affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 19.

FOOTNOTES

¹The petitioner stated that when she requested the hearing she had misunderstood the doctor's evaluation of her husband. She said the doctor later told her the same thing he had told the Department (that her husband's injury no longer prevented him from working).

²The petitioner was specifically advised of the "work quarter" verification requirements she or her husband would have to meet to establish eligibility as an "unemployed parent". See W.A.M. 2333.

³The petitioner stated she had recently been treated for psychological stress.

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